IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3789 of 1998
With
CIVIL APPLICATION NO. 1717 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SC RUPCHANDANI - Petitioner
Versus
CHAIRMAN & 2 - Respondents

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Appearance :
MR KB PUJARA for Petitioner:
DS AFF.NOT FILED (N) for Respondent: 1,
NOTICE SERVED BY DS for Respondent : 2,
M/S TRIVEDI & GUPTA for Respondent: 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 10/10/2007

ORAL JUDGMENT

1. Rule. Shri. Uday Joshi, learned counsel for the

respondent Bank waives services of notice of rule for respondent Bank. With the consent of the parties, rule is fixed forthwith.

2. The petitioner by this petition under Article 226 of the Constitution of India has challenged the denial of compassionate appointment to the son of the petitioner by order dated 8/7/1997, 24/10/1997 and 01/04/1998, on the ground that though the petitioner was entitled to receive compassionate appointment for his son as he was required to be relieved on compulsory retirement on account of medical grounds, the rejection was solely based upon the ground of financial condition of the family which was never a criterion for rejecting the request for compassionate appointment as per the policy promulgated by the respondent Bank.

3. Facts in brief deserve to be set out in order to appreciate the controversy:

In the respondent Bank there exist a policy for appointing dependants of employees retiring from or leaving the Banks service on health grounds. The relevant extract is produced on page-16 which provide for offering appointment to the dependants of employees retiring from the Bank's service or leaving the Bank's service on medical ground. The petitioner at the relevant time was serving as Deputy Manager (Adv) at

Kalol. While in service he was having some trouble in his eyes and therefore, subjected himself to examination by Medical Board and the Board in turn opined that the petitioner was unfit to carry on his duties and therefore, required to be retired on medical grounds. The Medical Board examined the petitioner on 19/6/1996 and declared him to be permanently and completely unfit to continue in Bank's service and therefore petitioner on health ground w.e.f. 19/6/1996 retired. As per the policy of appointing dependants of such employees who retired on medical grounds the petitioner made an application for obtaining appointment of his son on compassionate ground vide his application dated 24/6/1996. The petitioner supplied all the relevant documents and material as per the information required for considering the case of his son for being appointed on medical grounds. Clarifications were sought from petitioner which were supplied by petitioner. The petitioner had to put up reminders also, however they were not replied. On 8/7/1997 respondent no.3 rejected the application of the petitioner on the ground that on examination of his financial position there was no case for offering compassionate appointment as prayed. Accordingly the request was rejected vide order dated 8/7/1997. The petitioner put up a representation on 21/7/1997 justifying his application for seeking appointment of his son on basis of the

compassionate ground as per the policy existing in the respondent Bank. The respondent Bank issued reply dated 24/10/1997 regarding its inability to consider his request for appointment of his son in the Bank's service on compassionate ground. Once again the petitioner addressed a communication by way of representation dated 30/10/1997 detailing therein the cases in which compassionate appointments were given to dependants of such employees who had retired on medical grounds and contending that the financial position ought not to have been the criteria to be considered for denying the compassionate appointment to the dependant of an employee retiring on medical grounds. This representation also came to be rejected by the respondent Bank vide communication dated 01/04/1998 with a rider that, 'no further correspondence would be entertained in this behalf'. Said communication dated 01/04/1998 is at page 57 in the memo of the petition. Being aggrieved by this rejection present petition is filed under Article 226 of the Constitution of India by the petitioner.

4. Shri. Pujara, learned counsel appearing for the petitioner has submitted that the policy of appointing dependants of employees retiring on compassionate ground do not provide that the application could not be considered or be rejected on the ground of financial position of

the employee who retired on medical ground. The application form which is prescribed wherein the application is required to be made by the person seeking such employment also did not carry any column requiring information to be furnished indicating financial status or position of the employee or his dependant who seeks compassionate appointment under the said policy. Shri. Pujara has submitted that the petitioner did point out to the authorities several cases wherein high ranking officials of the Bank, who retired on medical grounds were given benefit of the policy and their dependants were employed. Shri. Pujara has relied upon the decision of this Court in case of GUJARAT MARITIME BOARD Vs. KANJI NATHA KARMATA, reported in 2004(2) GLH, pg. 392 and submitted that passage of time in itself should not militate against according the benefit of policy of appointing dependants of deceased and or incapacitated employees who are retired on medical grounds. In the said case the Devision Bench rejected the Letters Patent Appeal filed by Gujarat Maritime Board wherein a mother of a son was the petitioner who had applied for compassionate appointment for his son who attained the age of 18 years and became eligible for employment. The Division Bench brushed aside all the contentions that the employee when he died whose heir or dependant seeking appointment after 18 years was not covered by the policy at the time when the

employee died said policy was not in existence. Shri. Pujara submits that the present petitioner's case is on much stronger footing as the Division Bench of this Court after taking into consideration the ratio laid down by the Apex Court in case of UMESH KUMAR NAGPAL V STATE OF HARYANA & ORS, reported in JT 1994 (3) SC pg. 525 rejected the LPA of the Gujarat Maritime Board. Shri. Pujara in reply to the query of the Court submitted that, the present financial position of the dependant or the employee is not the relevant consideration as the challenge is with regard to rejection in the year 1996. However it was ascertained from the petitioner, who submitted that the petitioner is in receipt of pension to the tune of RS.9750/- per month and his son is getting around Rs.12,000 to Rs.13,000=00 per month but due to advent of shopping malls and trading into retail commodities there is serious adverse impact upon the vocation of the son who seeks appointment or for whom compassionate appointment is requested.

5. Shri. Uday Joshi, learned counsel of M/s Trivedi & Gupta, counsels for the Bank has submitted that the very purpose of offering compassionate appointment which is underlined in the policy makes it incumbent upon the Bank to take into consideration the financial position and status of the employee who was made to retire on medical grounds. Therefore Shri Joshi submitted

that the Bank's rejection deserved to be viewed from this angle and therefore the rejection of the request for compassionate appointment on the basis of financial status can not be said to be in any way arbitrary, or capricious so as to call for any interference under Article 226 of the Constitution of India. Shri Joshi has drawn attention of the Court to the wording in the policy where under compassionate appointment is claimed. Shri Joshi has laid emphasize upon the word “may be” and submitted that by employment of word “may be” in the policy itself it can be said to have invested the Bank with discretion to deny the compassionate appointment in a given case, and the employee retiring on medical ground cannot claim employment of his dependent as a matter of right. Consideration of financial condition by the Bank needs to be viewed against the said backdrop which would go to show that the Bank was justified in rejecting the request for compassionate appointment in the present case. Shri. Joshi has relied upon the decision of the Apex Court in case of Umesh Kumar Nagpal (supra) and submitted that the Apex Court has clearly laid down that the policy of compassionate appointment is an exception which is required to be made in view of the peculiar facts & circumstances that had befallen the family. Therefore it was always an exception to the rule of normal appointment and when such an exception is made, the underlying principle of

making exception or underlying motive that is to help the family of deceased and or such employee who has been abruptly taken off the job to overcome the crisis that had fallen on the family needs to be considered. In view of this, the Respondent Bank was absolutely justified in denying compassionate appointment to the son of the petitioner as the petitioner's financial status at the relevant time was one of the material consideration which the Bank could not have overlooked in light of the decision of the Apex Court in case of Umesh Kumar Nagpal (supra).

6. Shri Joshi has submitted that after the decision of the Apex Court in Umesh Kumar Nagpal (supra) there are no decision on the same line which would go to show that the compassionate appointment without considering the financial status is not to be offered. Shri. Joshi has further relied upon the original scheme which is inuring in the Bank in respect of offering compassionate appointment to the deceased employees' dependants and submitted that this policy of offering compassionate appointment to the incapacitated employees dependants is in line with the said policy and therefore as both the policies are required to be viewed from the angle of helping the family of such employee to overcome the sudden adverse circumstance arising on account of non employment of the bread-

earner. Shri Joshi has submitted that, even as on date the petitioner and or his son can not be said to be in need of compassionate employment as it is said by the petitioner that petitioner is receiving pension to the tune of Rs.9750/- per month and his son is also receiving an income of Rs.12000/- to Rs.13000/- per month which is in any case sufficient to live a comfortable life even in these days.

7. Shri. Joshi has submitted that under Article 226 of the Constitution of India the Court may take this factor in to consideration while examining the plea for securing compassionate appointment on a strict interpretation of the policy.

8. This Court has heard learned counsels at length and perused the record. The fact remains to be noted that the policy in question is said to have been implemented since 28/11/1994. The relevant clause of the policy of the Bank read as under :

“ Appointment of Dependents of Employees retiring from or leaving the Bank's Service on Health Grounds.

1. The case of sons/daughters/ near relatives of employees, who is compelled to give up the Bank's job on medical grounds will also be considered for appointment in the Bank's service on compassionate grounds. The salient features of the scheme are as follows :

i) The benefit of compassionate appointments as applicable to dependants of deceased employees may be extended to the dependants of the officers/ employees, who are incapacitated by accident,serious ailments like paralysis, cancer, blindness etc. while in service and are compelled to leave the Bank's service before the normal retirement age. This will also apply to employees whose services have been terminated by the Bank on medical grounds.

ii) All such cases of appointments on compassionate grounds should be made only with the prior approval of the Managing Director.

iii) The benefit would not be extended to a case, where the Bank employee has retired on or after attaining the age of 55 years.

iv) The benefit would normally be restricted to the wife, son or daughter of an employee, who is compelled to leave the Bank's service on medical grounds. The benefit may be extended to a near relative other than the wife, son or daughter of the employee only in an exceptional circumstances, where it is established to the satisfaction of the Bank that such a near relative will in fact be the bread winner of the family.

v) The application for appointment on compassionate grounds should be ordinarily received immediately on the retirement of an employee and should in no case be entertained after sixty days of the date of cessation of service by such employee.

vi) Before the proposal for compassionate appointments of the dependents of the employees, who had to leave the Bank's service on health grounds is submitted to Central Office for consideration, the employees concerned should be examined by a

> specially constituted Medical Board whose opinion about total disability of the employee for continued effective service in the Bank should be obtained and forwarded along with the proposal."
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> Clause 4 of the policy also deserves to be taken into consideration, which is set out as under:-
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> 4. Employees, who are seeking retirements on medical grounds, (before attaining the age of 55 years) should invariably be referred to the Medical Boards specially constituted for the above purpose. Such retiring employees should also express their intentions, as far as possible, in regard to the appointment of their dependants on compassionate grounds, at that very moment. In no case in future, will any such request be entertained if received after sixty days from the date of retirement. "

9. Learned counsel for the respondent Bank has placed heavy reliance upon the policy produced at page 101 of the petition, especially in Para no. 1, 2 and clause (e) of the said policy under title "Financial Condition of the family" for resisting this petition, which is said to be the codification of the existing policy from 5/12/1996. Petitioner has also placed reliance upon the policy which was existing prior to 5/12/1996 and it was in operation when the petitioner retired on 19/6/1996. The relevant policy which is said to have been codified vide document dated 5/12/1996 refers to a communication received from Government of India, Ministry of Finance in the letter dated

28/11/1994 and the same was for the first time implemented or effected in the policy which is said to be codified w.e.f. 5/12/1996. The question arise as to why was there the requirement for codifying the policy. It is not the case of the respondent Bank that the policy which is relied upon by the petitioner was not in the vogue at the relevant time nor is it the case of the Bank that the Government of India's letter referred to in the codified policy dated 5/12/1996 had been taken into consideration while framing the policy on the earlier occasion. In fact the policy of offering employment to the dependant of deceased employee was in vogue and the same was extended to the employees who were made to retire on account of medical grounds. The petitioner has in fact cited example of one Mr.K.A. Trivedi, Mr. D.R. Joshi, Mr. Javed Akhtar,Mr. R.A. Koteshwar, Mr. R.N. Daoo etc. who were admittedly in a better financial position than the petitioner, and yet their dependents were offered employment to which the Bank has simply replied, stating that their cases were 'peculiar' and therefore the benefit of compassionate employment was accorded to them. The Bank has not taken a stand that in those employees' cases compassionate appointment to the dependants were given wrongly or through any mistake. Had it been the case of the Bank that these employees who have been named herein above and who have said to be in better position

than that of the petitioner were wrongly or through mistake given the benefit then it could have been said that, as the Bank had realised the mistake the petitioner can not be permitted to agitate and rely upon same mistake so as to compel the Bank to perpetuate the same mistake once again. But in the instant case on the contrary the Bank has not denied the assertion of the petitioner that those employees were on a better footing financially than the petitioner, but a defence is put up that on account of 'peculiar' circumstances of their cases their dependents were given appointments. It was bounden duty cast upon the Bank when confronted with an assertion of discrimination to explain the 'peculiar cirsumtances' warranting according of benefit. Only some explanation is found in case of Shri. Joshi and Shri. Trivedi. The fact remains that no explanation except peculiar circumstances is coming up so far as Mr. Javed Akhtar,Mr. R. A. Koteshwar and Mr. R.N. Daoo, who were admittedly holding higher position than the petitioner were beneficiaries of the policy. They were far higher than the petitioner in position. As it is stated herein above it is not the case of the Bank that through mistake or through inadvertence employment was given to their dependants. Juxtaposing this fact with the fact of requirement of codifying the policy as it is submitted by learned counsel for the Bank in the document dated 5/12/1996 specifically

introducing clause of taking into consideration the financial status will all the more make it clear that atleast when the petitioner retired from service of the Bank on medical ground i.e. 19/6/1996 the policy in vogue relied upon by the petitioner was being operative and implemented and at that time the consideration of financial status was not one of the factor for denying the benefit of compassionate appointment. The Division Bench decision in respect of Gujarat Maritime Board (supra) is binding on this Court wherein the decision of the Apex Court in case of Umesh Kumar Nagpal (supra) is considered and thereafter the Court has permitted the contention of the Gujarat Maritime Board in respect of passage of time and non applicability of the policy to the deceased at the relevant time. The Apex Court decision in case of MUKESH KUMAR V. UNION OF INDIA & ORS, reported in 2007 AIR SCW 5556; and in case of ABHISHEK KUMAR V. STATE OF HARYANA & ORS, reported in 2006 (13) SCALE, 658 helps the case of the petitioner.

10. In view of the aforesaid discussions, this Court is left with no choice but to declare that the decision of the Bank impugned in this petition have been vitiated on account of taking into consideration the factor which was not provided in the policy at the relevant time and which has resulted into wrongful denial to the

petitioner. It is therefore required to be directed to the Bank that the petitioner's request for appointing his son on compassionate ground be considered without taking into consideration the financial status of the petitioner and his son at the relevant time.

11. With this direction, the petition stands disposed of. The respondent Bank shall take a decision within four weeks from the date of receipt of writ of this Court order and the decision be communicated to the petitioner within a week thereafter. Rule is made absolute to the aforesaid extent. No cost.

12. In view of the order passed in main petition, no order is passed in civil application No. 1717 of 1999 and the civil application stands disposed of accordingly.

Direct service permitted.

[S.R. BRAHMBHATT, J]

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